

**Department of State Health Services
Council Agenda Memo for State Health Services Council
June 12 - 13, 2013**

Agenda Item Title: Amendments to rules concerning the care of animals by circuses, carnivals, and zoos

Agenda Number: 5.b

Recommended Council Action:

☐ For Discussion Only

☒ For Discussion and Action by the Council

Background:

The Zoonosis Control Branch, located in the Infectious Disease Control Unit/Infectious Disease Prevention Section of the Division of Disease Control and Prevention Services, promotes public health through the prevention and control of zoonotic diseases, which are diseases transmitted to humans from animal reservoirs. Zoonotic diseases encompass many of the most dangerous disease threats to humans and, worldwide, make up approximately 60 percent of human pathogens and 75 percent of recently emerging infectious diseases affecting humans. Some of the zoonoses present in Texas include anthrax, hantavirus, Lyme disease, plague, rabies, tularemia, and West Nile virus.

A representative sample of services provided by the Zoonosis Control Branch includes:

- surveillance of diseases, such as rabies (in 2011, there were 1,018 laboratory-confirmed cases of rabies compared with 773 confirmed cases in 2010);
- the Oral Rabies Vaccination Program;
- inspection of rabies quarantine facilities (Zoonosis Control personnel inspected 351 rabies quarantine facilities during January-June of 2012); and
- consultations to the public, animal control professionals, and other groups on disease transmission, handling potential rabies exposures, and interpreting animal-related laws.

The program is funded through General Revenue.

Summary:

The purpose of the rules is to establish minimum standards regarding the care of live animals in circuses, carnivals, and zoos that will promote humane conditions for these animals and public health and safety. The rule changes will more accurately reflect the standards in the United States Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS), Animal Welfare Act, and DSHS' rules in Rabies Control and Eradication.

The proposed changes clarify:

- proper sanitation and storage practices to avoid disease and infestation where animals are housed and transported;
- sufficient heating, cooling, and drainage for indoor facilities;
- food, water, transportation, and space requirements for animals;
- certain definitions; and
- routine and emergency veterinary care.

The amendments comply with the four-year review of agency rules required by Government Code, Section 2001.039.

The rules primarily impact animals in the care of circuses, carnivals, and zoos and the safety of the public.

Key Health Measures:

There are no key health measures applicable to these rules. While Occupations Code, Sections 2152.051-2152.052 mandate the existence of the rules and the adoption of standards, DSHS has not issued a license under these rules due to the large range of legislated exemptions. These exemptions include such entities as those licensed under the federal Animal Welfare Act (by USDA); zoos accredited by the American Association of Zoological Parks and Aquariums or operated by a political subdivision of the state or a child-care institution; premises where nonindigenous ruminants are bred and raised; or organizations sponsoring an exhibition of a domestic livestock show or rodeo.

DSHS would like to propose rescinding the statute during the next Sunset review.

Summary of Input from Stakeholder Groups:

Stakeholder input for the rule began in July 2012, and input was sought from the USDA-APHIS, Texas Veterinary Medical Association, Texas State Board of Veterinary Medical Examiners, Texas Animal Control Association, Texas Municipal League, Texas Humane Legislative Network, Texas Federation of Animal Care Societies, and statewide DSHS Zoonosis Control staff.

Rule changes from stakeholder input included:

- clarifying language to make the rules refer to live animals throughout the subchapter for consistency;
- updating the definition of sanitize to make it technically correct and consistent with DSHS' rabies rules; and
- modifying language pertaining to transportation of animals and their housing at indoor and outdoor facilities, including standards for providing food, water, and care, environment control, and housing with other animals.

Proposed Motion:

Motion to recommend HHSC approval for publication of rules contained in agenda item #5.b.

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| Approved by Assistant Commissioner/Director: | | Janna Zumbrun, Acting Assistant Commissioner for DCPS Division | Date: 5/14/13 |
| Presenter: | Tom Sidwa, DVM, MPH | Program: Zoonosis Control Branch | Phone No.: 512-776-6628 |
| Approved by CCEA: | | Carolyn Bivens | Date: 5/10/2013 |

Title 25. HEALTH SERVICES
Part 1. DEPARTMENT OF STATE HEALTH SERVICES
Chapter 169. Zoonosis Control
Subchapter B. Care of Animals by Circuses, Carnivals, and Zoos
Amendments §§169.41 - 169.48

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §§169.41 - 169.48, concerning the care of animals by circuses, carnivals, and zoos.

BACKGROUND AND PURPOSE

These rules are necessary to comply with Occupations Code, Chapter 2152, "Regulation of Circuses, Carnivals, and Zoos," §§2152.051 - 2152.054, which provide the Executive Commissioner of the Health and Human Services Commission with the authority to adopt standards for the operation of circuses, carnivals, and zoos, prescribe qualifications for its inspection agents, and prescribe the amount of each fee required by this chapter.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 169.41 - 169.48 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are required by statute.

Specifically, the sections cover purpose, definitions, facilities for housing the animals, transportation of animals, food and water requirements in transit, care in transit, licenses, and state inspection agents.

After carefully considering the alternatives, the department believes the rules as amended are the best method of implementing the statute to promote humane conditions for animals and protect the public health with rules for the standards of circuses, carnivals, and zoos in the State of Texas.

SECTION-BY-SECTION SUMMARY

The amendment to §169.41 modifies the language to make it more concise and clarifies that the subchapter establishes "minimum" standards for the care of "live" animals in circuses, carnivals, and zoos.

The amendment to §169.42 updates a definition of "Sanitize" in paragraph (5) of the section to make it technically correct and consistent with the department's rabies rule concerning Rabies Control and Eradication, in §169.22(26), "Sanitize."

The amendment to §169.43 modifies language pertaining to indoor and outdoor housing facilities, including standards for the provision of food, water, and care, to make it consistent with the standards of the department's rabies rules and standards in Rabies Control and Eradication and in the United States Department of Agriculture (USDA)-Animal and Plant Health Inspection Service (APHIS), Animal Welfare Act (AWA) (7 USC §§2131 - 2159).

The amendment to §169.44 modifies the language pertaining to transportation of animals to make it consistent with the standards of the department's rabies rules and standards in Rabies Control and Eradication and in the USDA-APHIS, AWA.

The amendment to §169.45 modifies the language pertaining to food and water while animals are in transit to make it consistent with the standards of the department's rabies rules in Rabies Control and Eradication and in the USDA-APHIS, AWA.

The amendment to §169.46 modifies the language to make it consistent with the standards in the USDA-APHIS, AWA, concerning frequent observation of animals during transportation.

The amendment to §169.47 provides the updated mailing address for the department.

The amendment to §169.48 clarifies language relating to the approval of state inspection agents.

FISCAL NOTE

Janna Zumbrun, Director, Infectious Disease Prevention Section, has determined that for each year of the first five years that the sections will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Zumbrun has also determined that there will be no effect on small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Zumbrun has determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections will be that it enhances public health and safety by providing structurally sound housing facilities for animals under the care of circuses, carnivals, and zoos. After careful consideration of alternatives, the department concludes that

the rules, as revised, provide a clear, concise, comprehensive policy of standards of humane care for animals under the care of circuses, carnivals, and zoos. This policy is the most efficient use of public and private resources to achieve these goals.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed amendments do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Tom Sidwa, DVM, MPH, Department of State Health Services, Infectious Disease Prevention Section, Zoonosis Control Branch, Mail Code 1956, P. O. Box 149347, Austin, Texas 78714-9347, or by email to Tom.Sidwa@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The amendments are authorized by Occupations Code, §2152.051, which requires that the department adopt rules necessary to administer Chapter 2152, "Regulation of Circuses Carnivals, and Zoos;" §2152.052, which provides the department with the authority to adopt standards for the operation of circuses, carnivals, and zoos; §2152.053, which provides the department with the authority to prescribe qualifications for its inspection agents; §2152.054, which provides the department with the authority to prescribe the amount of each fee required by this chapter; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The amendments affect Occupations Code, Chapter 2152; Government Code, Chapter 531; and Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

Legend: (Proposed Amendment(s))

Single Underline = Proposed new language

[Bold, Print, and Brackets] = Current language proposed for deletion

Regular Print = Current language

(No change.) = No changes are being considered for the designated subdivision

§169.41. Purpose.

The purpose of these rules is to establish minimum standards regarding the care of live animals in circuses, carnivals, and zoos that will promote humane conditions for these animals and public health and safety.

§169.42. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (4) (No change.)

(5) Sanitize--To make visibly **[physically]** clean followed by the use of a disinfectant **[and]** to destroy disease-producing agents **[organisms]**.

(6) (No change.)

§169.43. Facilities for Housing the Animals.

(a) Housing facilities shall:

(1) be structurally sound, constructed of material(s) and of a strength appropriate for any enclosed animals, and maintained in good repair in order to protect the animals from injury, to contain them, and to prevent transmission of diseases **[exposure to other animals]**;

(2) have reliable and adequate electric power, if required to comply with other provisions of this subsection, and have adequate fresh, clean **[potable]** water available;

(3) store and adequately protect supplies of food and bedding against deterioration, molding, and infestation or contamination by vermin and provide refrigeration for supplies of perishable food;

(4) make provision for the removal and disposal of animal and food wastes, bedding, dead animals, trash, and debris, and provide and operate disposal facilities so as to minimize vermin infestations, odors, and disease hazards; and

(5) (No change.)

(b) Indoor facilities shall:

(1) be sufficiently heated or cooled to protect the animals from extremes of temperature, provide for their health, and prevent their discomfort, plus the ambient temperature shall not be allowed to fall below or rise above temperatures compatible with the health and comfort of the animals **[when necessary]**;

(2) (No change.)

(3) have ample light as appropriate for the species involved and to permit routine inspection and cleaning, plus be designed to protect the animals from excessive illumination **[during the entire work period]**;

(4) (No change.)

(5) have a method to eliminate excess water rapidly.

(A) Drains shall be properly constructed and kept in good repair to avoid foul odors or backup of sewage.

(B) (No change.)

(c) Outdoor holding facilities shall:

(1) (No change.)

(2) provide adequate shelter to protect animals from any form of discomfort, overheating, direct rays of the sun, cold or inclement weather, and direct effects of wind, rain, or snow;

(3) be constructed in such a manner that they will protect and contain the animals (as an additional safety measure, a perimeter fence constructed in a manner to contain the animals and keep unauthorized persons out is recommended);

(4) be readily sanitized[,] and not create a nuisance; and

(5) (No change.)

(d) Primary enclosures shall:

(1) - (4) (No change.)

(5) provide sufficient space to allow each animal to **[turn around fully, stand, sit, lie down, and]** make normal postural adjustments without touching the top of the enclosure, including turning freely, standing easily, sitting, stretching, moving its head, lying in a comfortable position with limbs extended, and moving and assuming a comfortable posture for feeding, drinking, urinating, and defecating.

(e) Feeding shall:

(1) be at least once a day or more often as appropriate for the species, age, condition, and size of the animal, except as otherwise directed by a licensed veterinarian, as defined in the Texas Health and Safety Code, §826.002, and with food free from contamination, wholesome, palatable, and of sufficient quality and nutritive value to meet the normal daily requirements for the species, age, condition, and size of each animal **[the animal(s)]**; and

(2) be in food receptacles accessible to each animal and located so as to minimize contamination by excreta.

(A) Feeding pans **[pens]** shall be durable and kept clean and sanitary.

(B) (No change.)

(C) Self feeders may be used for feeding dry foods to animals acclimated to their use, but they must be kept clean and sanitary to prevent molding, contamination, deterioration, or caking of feed.

(f) If fresh, clean **[potable]** water is not accessible to every animal **[the animal(s)]** at all times, it shall:

(1) be provided as often as necessary for the health and comfort of the animal when considering the species, age, condition, and size of the animal and/or **[offered at least twice daily for periods of not less than one hour, except]** as directed by a licensed veterinarian; and

(2) (No change.)

(g) Sanitation of primary enclosures shall include:

(1) - (2) (No change.)

(3) having building and premises kept clean and in good repair to protect every animal from injury.

(h) A regular program for the control of insects, ectoparasites, and other vermin **[pests]** shall be established and maintained.

(i) Emergency **[and routine]** veterinary care shall be provided for sick and injured animals, and routine veterinary care shall be provided for all animals.

§169.44. Transportation of Animals.

(a) Primary enclosure construction. All compartments, transport cages, cartons, or crates shall be constructed such that:

(1) structural strength and size are sufficient to contain the **[live]** animal(s) and to withstand the normal rigors of transportation; **[.]**

(2) - (6) (No change.)

(7) the size is adequate to allow each animal to turn about freely and to make normal postural adjustments without touching the top of the enclosure, including turning freely, standing easily, sitting, stretching, moving its head, lying in a comfortable position with limbs extended, and moving and assuming a comfortable posture for feeding, drinking, urinating, and defecating, except when restriction of movement is essential to prevent danger to the animals, handlers, or other persons; and

(8) the bottom is solid and impervious to moisture in order to prevent leakage in shipment and **[still]** be readily sanitized **[at destination]** prior to reuse. Litter will be clean and of a suitable absorbent material that [which] is safe and nontoxic and in sufficient quantity to absorb and cover excreta.

(b) Transportation in primary enclosures. Primary enclosures used to transport animals **[live animal(s)]** shall:

(1) (No change.)

(2) not have **[live]** animals that have not reached puberty in the same primary enclosure with adult animals other than their dam; **[and]**

(3) allow socially dependent animals (such as the siblings, dam, or other members of the family) to have visual and olfactory contact; and

(4) [(3)] not transport a female animal in season (estrus) in the same primary enclosure with any male animal unless it is the prepubescent offspring of that female animal.

(c) Primary conveyances. The animal cargo space of primary conveyances transporting **[live]** animals shall:

(1) be designed and constructed to protect the health and ensure the safety and comfort of the **[live]** animals contained therein and allow them to remain dry and clean at all times;

(2) - (4) (No change.)

(5) have the interior of the animal cargo space kept clean and free from visible signs of vermin; and

(6) (No change.)

§169.45. Food and Water Requirements in Transit.

(a) Each **[live]** animal shall be fed a sufficient quantity of food for the species, age, condition, and size of the animal at least once in each 24-hour period unless there are special instructions given by a licensed veterinarian. The food shall be free from contamination, wholesome, palatable, and of sufficient quality and nutritive value to meet the normal requirements for the species, age, condition, and size of the animal.

(b) If not accessible at all times, fresh, clean **[Potable]** water shall be provided to each animal **[at all times or]** at least within 4 hours prior to being transported and then as often as necessary for the health and comfort of the animal when considering the species, age, condition, and size of the animal and/or **[twice daily for periods of not less than one hour, except]** as directed by a licensed veterinarian.

(c) Written instructions concerning the food and water requirements of each animal shall be affixed to the primary enclosure used for transporting the animal and shall accompany the animal during transport.

§169.46. Care in Transit.

The carrier, driver, or other employee shall be responsible to:

(1) observe each animal **[the live animals]** visually during surface transportation as frequently as circumstances may dictate, but not less than once every four hours, to ensure that each animal is receiving sufficient air for normal breathing, the ambient temperatures are compatible for the health and comfort of each animal, and that all other standards are being met (for transport by air, this observation requirement must be met if the animal cargo space is accessible during flight; if it is not accessible, visual observation shall be made whenever an animal is loaded and unloaded, plus whenever the animal cargo space is made accessible);

(2) obtain **[provide]** any needed veterinary care as soon as possible if an **[a live]** animal appears **[becomes]** in obvious physical stress;

(3) not remove wild or otherwise dangerous animals from their primary enclosure except under extreme emergency conditions, and, if the wild animal requires moving, provide a temporary primary **[secondary]** enclosure of adequate strength and size to contain the animal;

(4) provide adequate shelter to protect animals from extremes of hot, cold, or inclement weather, direct rays of the sun, and effects of wind, rain, or snow, plus **[and]** provide for the reasonable comfort of the animals; **[and]**

(5) provide protection to **[live]** animals, allowing them to remain dry during any form of precipitation; and **[.]**

(6) remove excreta as often as necessary to prevent contamination of the animals and to reduce disease hazards and odors if doing so does not create a safety hazard for any person or animal.

§169.47. Licenses.

(a) - (c) (No change.)

(d) Information. Applications [**Application**], renewal forms, and/or information may be obtained by contacting the Texas Department of State Health Services, Zoonosis Control Branch, Mail Code 1956, P.O. Box 149347, [**1100 West 49th Street**], Austin, Texas 78714-9347 [**78756**].

(e) Fees. The following fees shall accompany each application for an operating license and/or renewal of a license:

(1) - (3) (No change.)

(4) 501 or more animals [**on up**]--\$800.

(f) (No change.)

(g) Any facility that does not meet required minimum standards will not be licensed by the department.

§169.48. State Inspection Agents.

Each agent inspecting circuses, carnivals, or zoos under Occupations Code, Chapter 2152, will be approved by the manager of the [,] Zoonosis Control Branch.